



County of Los Angeles CHIEF EXECUTIVE OFFICE

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WILLIAM T FUJIOKA
Chief Executive Officer

May 2, 2008

To: Supervisor Yvonne B. Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: 
William T. Fujioka
Chief Executive Officer

Board of Supervisors
GLORIA MOLINA
First District

YVONNE B. BURKE
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

COUNTERFEIT GOODS NUISANCE ABATEMENT LAW TITLE 13, CHAPTER 13.90 (ITEM NO. 95, AGENDA OF MAY 6, 2008)

Item No. 95 on your Board's May 6, 2008, agenda is a request for adoption of the Counterfeit Goods Nuisance Abatement ordinance. The proposed ordinance is intended to help address the problems associated with properties used for the possession and sale of counterfeit goods in the unincorporated areas of the County through civil nuisance abatement procedures.

Based upon recent input from the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (RIAA) we are recommending that your Board consider minor revisions to the proposed ordinance. The revisions are shown in underline on the attachment.

The revisions would expand the definition of nuisance property to also include properties that are used to manufacture and sell recordings and audiovisual works that are improperly labeled, as prohibited by California Penal Code Section 653w.

The revisions also provide additional specificity as to the showing that must be made by a property owner in order for the Court to consider allowing a property that has been used to create a nuisance under Chapter 13.90, to be open, rather than remain closed.

We believe that these minor revisions are in keeping with the intent of the ordinance and will further enhance the goal of addressing properties in the unincorporated areas that are used for the manufacture and sale of counterfeited and pirated goods.

Each Supervisor
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The attached revisions have been reviewed by County Counsel and determined to be lawful. Additionally, County Counsel will have a full ordinance reflecting these revisions at the May 6 Board meeting, so that you may approve that version of the ordinance for first reading, if you choose.

If you have any questions regarding this matter, please contact Lari Sheehan at (213) 893-2477, or via e-mail at lsheehan@ceo.lacounty.gov.

WTF: LS
DSP: OS

Attachment (1)

- c: Executive Officer, Board of Supervisors
- County Counsel
- District Attorney
- Sheriff
- Acting Director of Public Works
- Auditor-Controller
- Director and Chief Medical Officer of Health Services
- Director and Health Officer of Public Health
- Director of Mental Health
- Director of Regional Planning
- Fire Chief
- Treasurer and Tax Collector

Revisions to Sections 13.90.010, 13.90.040, 13.90.060 and 13.90.070

(shown in underline)

13.90.010 Legislative findings.

The board of supervisors of the county of Los Angeles finds that the use of properties within the unincorporated areas of the county for the manufacturing, distributing, selling, or possessing for sale of counterfeit goods, or recordings or audiovisual works which are improperly labeled under California Penal Code section 653w, substantially interferes with the interest of the public in the quality of life and community peace, lawful commerce in the county, property values, and is detrimental to the public health, safety, and welfare of the county's citizens, its businesses, and its visitors. As a result, the board of supervisors finds that such properties constitute a public nuisance. This chapter provides nonexclusive procedures to address such public nuisances, which are supplemental to any other remedies available under county, state, or federal law.

13.90.040 Public nuisance defined.

Every property used for the purpose of willfully manufacturing, intentionally selling, or knowingly possessing for sale: 1) any counterfeit of a mark registered with the Secretary of State or registered on the Principal Register of the United States Patent and Trademark office; or 2) any recording or audiovisual work whose cover, box, jacket, or label fails to accurately disclose the information regarding the manufacturer and the author, artist, performer, producer,

programmer, or group, as proscribed by California Penal Code section 653w, is a public nuisance which may be restrained, enjoined, abated, and prevented pursuant to the provisions of this chapter.

13.90.060 Remedies.

A. Restraining order and injunction. The district attorney or the county counsel may bring and maintain a civil proceeding in the name of the county of Los Angeles in the superior court to abate and prevent a public nuisance within the scope of this chapter, and temporarily restrain, preliminarily enjoin, and/or permanently enjoin the person or persons intentionally conducting, or knowingly maintaining or permitting the public nuisance from further conducting, maintaining, or permitting such public nuisance. The existence of an adequate remedy at law shall not prevent the granting of temporary or permanent relief pursuant to this chapter.

1. A judgment awarding a permanent injunction pursuant to this chapter may direct the closing by the sheriff of the property whereon the nuisance is being conducted, maintained, or permitted to the extent necessary to abate the nuisance, and shall direct the sheriff to post a copy of the judgment and a printed notice of such closing at the property. Mutilation or removal of such a posted judgment or notice while it remains in force, in addition to any other punishment prescribed by law, shall be a misdemeanor, which shall be punishable, on conviction, by a fine of not more than \$1,000 or by imprisonment not exceeding six months, or by both, provided such judgment contains therein a

notice of such penalty. The closing directed by the judgment shall be for such period as the court may direct, but in no event shall the closing be for a period of more than one year from the posting of the judgment and notice provided for in this section. If the owner files a bond in the amount equal to the full assessed value of the property ordered to be closed and submits proof to the court that the nuisance has been abated and will not be created, maintained, or permitted for such period of time as the property has been directed to be closed in the judgment, the court may vacate the provisions of the judgment that direct the closing of the property. The proof that the nuisance will not be created, maintained, or permitted in the future, shall include, but not be limited to, a written statement setting forth the proactive steps the owner will take to ensure that no such nuisances occur on the property. A closing of such property by the sheriff pursuant to the provisions of this section shall not constitute an act of possession, ownership, or control of the closed property by the sheriff.

2. A judgment awarding a permanent injunction pursuant to this chapter may also include an abatement order directing the sheriff to seize and remove from the property all material, equipment, and instrumentalities used in the creation and/or maintenance of the public nuisance and shall direct the sale by the sheriff of such personal property in the manner provided for the sale of chattels under execution. The net proceeds of any such sale shall be used to first defray all the lawful expenses incurred by the county, including, but not limited to, fees and costs of the removal and sale, allowances and costs of

keeping the property closed, and costs of the county's action. The balance, if any, shall be paid to the property owner.

B. In rem jurisdiction. The district attorney or the county counsel may name as a defendant, in any action under this chapter, the property whereon the public nuisance is being intentionally conducted, or knowingly maintained or permitted, by describing it by assessor's parcel number and street address and identifying at least one of the owners of some part of or interest in the property.

1. In rem jurisdiction shall be complete over the property whereon the public nuisance is being conducted, maintained, or permitted by affixing the summons to the principal door or entrance of the property, or other visible, conspicuous place thereon, and by mailing the summons by certified or registered mail, return receipt requested, to one of the owners of some part of or interest in the property.

C. Civil penalty. The district attorney or the county counsel shall be authorized to bring and maintain a civil proceeding in the name of the county of Los Angeles, in the superior court, to recover a civil penalty for a public nuisance defined in Section 13.90.040 of this chapter, in the manner provided in this chapter.

1. If upon a judgment in an action under this chapter a finding is made that the defendant has intentionally conducted, or knowingly maintained or permitted a public nuisance defined in this chapter, a penalty, to be included in the judgment, may be awarded in an amount not to exceed \$1,000 for each counterfeit of a mark registered with the Secretary of State or registered on the

Principal Register of the United States Patent and Trademark office, or each recording or audiovisual work whose cover, box, jacket, or label fails to accurately disclose the information regarding the manufacturer and the author, artist, performer, producer, programmer, or group, as proscribed by California Penal Code section 653w, manufactured, sold, or possessed on the property. Upon recovery, such penalties shall be paid to the treasurer of the county of Los Angeles.

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13.90.070 Temporary closing order; defendant's remedies.

A. A temporary closing order shall be vacated, upon notice to the district attorney or the county counsel, if the defendant shows to the satisfaction of the court, by affidavit and such other proof as may be submitted, that the public nuisance has been abated and will not be created, maintained, or permitted for such period of time as the property has been directed to be closed in the order; or in the alternative, the defendant posts a bond in an amount equal to the full assessed value of the property where the public nuisance is being conducted, maintained, or permitted, or in such other amount as may be fixed by the court, and shows to the satisfaction of the court, by affidavit and such other proof as may be submitted, that the public health, safety and welfare will be adequately protected during the pendency of the action. The aforementioned proof shall additionally include, but not be limited to, a written statement setting forth the proactive steps the owner will take to ensure that no nuisances are created, maintained, or permitted on the property during the pendency of the

action. The Bond and Undertaking Law of the Code of Civil Procedure, sections 995.010 et seq., shall be applicable to the provisions of this chapter requiring the posting of a bond.

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